

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION

3 ILLINOIS POWER COMPANY and) DOCKET NO.
4 AMEREN CORPORATION) 04-0294
5)
6 Application for authority to)
7 engage in a reorganization and to)
8 enter into various agreements in)
9 connection therewith, including)
10 agreements with affiliated)
11 interests, and for such other)
12 approvals as may be required under))
13 the Illinois Public Utilities Act))
14 to effectuate the reorganization.)

15 Springfield, Illinois
16 August 26, 2004

17 Met, pursuant to notice, at 10:00 A.M.

18 BEFORE:

19 MR. JOHN ALBERS, Administrative Law Judge

20 APPEARANCES:

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29 Carla Boehl, Reporter, CSR License #084-002710

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(Appearing on behalf of the Citizens
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1

I N D E X

2

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MARKED

ADMITTED

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PROCEEDINGS

JUDGE ALBERS: By the authority vested in me by the Illinois Commerce Commission, I now call Docket Number 04-0294. This docket was initiated by Illinois Power Company and Ameren Corporation. The joint applicants seek authority to engage in a reorganization and to enter into various agreements in connection therewith, including agreements with affiliated interests and for such other approvals as may be required under the Illinois Public Utilities Act to effectuate the reorganization.

May I have the appearances for the record, please.

MR. FLYNN: Christopher W. Flynn, Jones Day, 77 West Wacker, Suite 3500, Chicago, Illinois 60601, on behalf of Ameren Corporation.

MR. MacBRIDE: Appearing on behalf of Illinois Power Company and Dynegy, Inc., Owen MacBride, 6600 Sears Tower, Chicago, Illinois 60606.

MR. LAKSHMANAN: Joseph L. Lakshmanan, 500 South 27th Street, Decatur, Illinois 62521, appearing on behalf of Illinois Power Company and

1 Dynegy, Inc.

2 MR. FOSCO: Appearing on behalf of Staff of the
3 Illinois Commerce Commission, Carmen L. Fosco and
4 Carla Scarsella, 160 North LaSalle Street, Suite
5 C-800, Chicago, Illinois. And also appearing on
6 behalf of Staff, Janis Von Qualen, 527 East Capitol
7 Avenue, Springfield, Illinois 62701.

8 MS. SATTER: Susan L. Satter appearing on
9 behalf of the People of the State of Illinois, 100
10 West Randolph, Chicago, Illinois 60601.

11 MR. WU: Appearing on behalf of the Citizens
12 Utility Board, Stephen Wu, 208 South LaSalle Street,
13 Suite 1760, Chicago, Illinois 60604.

14 MR. ROBERTSON: On behalf of IIEC, Ryan
15 Robertson, Lueders, Robertson and Konzen, 1739
16 Delmar, Granite City, Illinois 62040.

17 JUDGE ALBERS: Are there any others wishing to
18 enter an appearance? Let the record show no
19 response.

20 Do we have any preliminary matters this
21 morning?

22 MR. MacBRIDE: Yes, Judge, I have one on behalf

1 of the Applicants. As you recall, Staff filed a
2 motion to strike the Applicants' testimony related
3 to the HMAC Rider on the grounds that public notice
4 had not been given of the proposed HMAC tariff in
5 this case. To attempt to resolve this issue, the
6 Company, Illinois Power Company, is prepared to
7 publish a notice of the fact that the HMAC Rider has
8 been filed with the Commission for approval and is
9 under consideration before the Commission. We have
10 shared this notice, the proposed text, with the
11 parties and they have indicated that they don't have
12 any objection to the particular text. And I would
13 like to hand a copy of this to the ALJ.

14 The document I am providing you has both
15 typed text and handwritten language. The typed text
16 is the language of the standard notice that Illinois
17 Power uses for a typical 45-day notice tariff filing
18 in the format that's specified in 83 Illinois
19 Administrative Code Part 255. The handwritten
20 inserts are additional language we intend to include
21 that would more specifically reference the nature of
22 the HMAC Rider as well as indicate to readers of the

1 notice that this proceeding has in fact been in
2 progress and that they should, you know, if they
3 wish to make their views known, they should contact
4 the Commission promptly, and we have put a date of
5 September 15 as an appropriate date.

6 I am told that if we initiate the process
7 to publish this notice today which we would do in
8 approximately 10 to 15 newspapers that we typically
9 use throughout Illinois Power's service territory
10 for notice of this type, that can actually start to
11 get published as early as tomorrow and, if not
12 tomorrow, next week. And what we have proposed to
13 do is publish it for two consecutive weeks which is
14 the general requirement for 45-day filings in Code
15 Part 255. So I think to, I guess, hopefully
16 minimize the possibility of any future dispute about
17 the nature of the notice or the text of the notice,
18 and I realize I have just handed this to the judge,
19 but if he could give some indication or ruling to
20 the effect that this appears to be an appropriate
21 notice under the circumstances for purposes of
22 satisfying the notice requirement that has been

1 raised by the motion, I think that would be useful
2 and appreciated.

3 JUDGE ALBERS: Okay. Would you like me to
4 just take a few minutes right now and take a look at
5 that?

6 MR. MacBRIDE: Yes.

7 JUDGE ALBERS: Off the record for a minute.

8 (Whereupon there was
9 then had an
10 off-the-record
11 discussion.)

12 JUDGE ALBERS: Back on the record. I am
13 actually pleased you have come to this resolution
14 because the one thing I worked on this morning was
15 that motion to strike the HMAC Rider. And I had
16 thought, given the nature of it, that would be
17 probably most important in most folks minds' anyway.
18 I can tell you the thinking I had in making my
19 ruling but essentially it was going to come down to
20 something like this being needed. So I think the
21 notice to municipalities, that was accomplished, the
22 April 2, 2004, notice about the first status that

1 the Clerk's office sent out. I double checked on
2 that this morning. But essentially I think in a
3 nutshell to be consistent with the Commission's past
4 orders regarding riders, particularly the MGP Rider,
5 this type of thing had been required and I think
6 this takes care of notice concerns in my mind. So I
7 am glad to hear everyone is agreeable to use of
8 this. I think the text of this looks appropriate.

9 MR. MacBRIDE: All right. Thank you. Did I
10 understand you to say you would check with the
11 Clerk's office?

12 JUDGE ALBERS: I had checked with the Clerk's
13 office this morning and on April 2 a notice went out
14 regarding the first status hearing in this case and
15 they did serve the municipalities of Illinois Power,
16 so.

17 MR. MacBRIDE: All the parties are blissfully
18 unaware of that.

19 JUDGE ALBERS: I thought it was worth double
20 checking.

21 MR. MacBRIDE: Maybe we should say that the
22 Clerk's office was remarkably on the ball.

1 JUDGE ALBERS: As far as the other motions to
2 strike, I am comfortable waiting if you all want to
3 continue your discussions.

4 MR. FOSCO: Again, Your Honor, I am not sure if
5 we put that on the record but just to confirm, the
6 parties are discussing the other -- actually, the
7 parties are discussing probably resolving issues,
8 not so much that motion. But pending the conclusion
9 of those discussions which should be either tomorrow
10 or Monday, we would ask that you hold in abeyance
11 your ruling on the motions to strike that was
12 proposed by the Applicants. My understanding is
13 neither CUB, AG nor Staff object to holding that
14 ruling today, if you were ready to make it.

15 JUDGE ALBERS: Actually, I am not ready to make
16 a ruling on the remaining four motions, and I am
17 comfortable waiting, if that is the request of the
18 parties.

19 MR. FLYNN: It is.

20 JUDGE ALBERS: And as far as the motion
21 regarding the HMAC Rider, does this notice resolve
22 Staff's concerns and is Staff still pursuing

1 striking of any HMAC references?

2 MS. VON QUALEN: No, Staff wanted to be sure
3 that notice was given pursuant to 9-201 and this
4 notice we think will satisfy that requirement. So
5 we are no longer seeking to strike testimony once
6 the notice has been given.

7 JUDGE ALBERS: Very good. All right. Just
8 wanted to make sure I was clear. Thank you.

9 Are there any other preliminary matters
10 then? No. Okay, I think we can start with our
11 witness list then.

12 MR. FLYNN: Mr. Nelson is up first, I believe.
13 He has not been sworn.

14 JUDGE ALBERS: I will go ahead and swear
15 everyone who is here and testifying today.

16 MR. FLYNN: We have alerted the Staff that we
17 have just a couple of questions for Ms. Hathhorn and
18 no questions for Ms. Pearce. And Mr. Lyons who is
19 on the revised list for today is not available until
20 Monday afternoon which I think we mentioned
21 yesterday. So as far as witnesses go, I believe
22 once we finish with Ms. Hathhorn, that we are out of

1 witness things to do today.

2 JUDGE ALBERS: Sounds like an accurate
3 statement from this list here. Well, I will go
4 ahead and swear Mr. Nelson and Ms. Hathhorn since I
5 think I see her in the audience here. If you could
6 both stand and raise your right hand, please.

7 (Whereupon the
8 Witnesses were duly
9 sworn by Judge Albers.)

10 JUDGE ALBERS: Thank you. Please proceed.

11 MR. FLYNN: Ready?

12 CRAIG D. NELSON
13 called as a Witness on behalf of Applicants, having
14 been first duly sworn, was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. FLYNN:

18 Q. Please state your name.

19 A. I am Craig D Nelson.

20 Q. Mr. Nelson, by whom are you employed?

21 A. Ameren Services Company.

22 Q. And you have prepared various pieces of

1 testimony and exhibits for the purpose of this
2 proceeding?

3 A. Yes, I have.

4 Q. I show you a document previously marked as
5 Applicants' Exhibit 3.0 bearing the caption Direct
6 Testimony of Craig D. Nelson. Is this a copy of
7 your direct testimony in this case?

8 A. Yes, it is.

9 Q. Is this testimony true and correct to the
10 best of your knowledge?

11 A. Yes.

12 Q. And I show you a document previously marked
13 as Applicants' Exhibit 3.1, a Power Purchase
14 Agreement between Illinois Power Company and Dynegy
15 Power Marketing. Does this exhibit accurately
16 reflect what it purports to reflect?

17 A. Yes, yes, it does.

18 Q. Show you a document previously marked as
19 Applicants' Exhibit 3.2, a Negotiated Tier II
20 Memorandum. Does this exhibit accurately reflect
21 what it purports to reflect?

22 A. Yes.

1 Q. Show you a document previously marked as
2 Applicants' Exhibit 3.3, an Interim PPA Rider. Does
3 this exhibit accurately reflect what it purports to
4 reflect?

5 A. Yes, it does.

6 Q. And I show you a document previously marked
7 as Applicants' Exhibit 3.4, a Revenue Requirement
8 Comparison. Was this exhibit prepared by you or
9 under your direction and supervision?

10 A. Yes, it was.

11 Q. And is the information reflected thereon
12 true and correct to the best of your knowledge?

13 A. Yes, it is, as it was corrected, the
14 corrected 3.4 that was filed in response to a data
15 request. Then 2.03, corrected one number.

16 MS. SATTER: Would it be possible to state what
17 that number was?

18 MR. FLYNN: Yes, I was just about to ask the
19 witness.

20 Q. Consider yourself asked.

21 A. On the original Exhibit 3.4, Case 2, on the
22 lower right-hand side of that spreadsheet, there was

1 the number didn't print, the sell formula was
2 printed as a number sign value and the corrected 3.4
3 that was filed within 2.03 simply inserted that
4 number in there.

5 Q. What number was that?

6 A. Fifteen fifty-eight.

7 MR. FLYNN: Thank you. We will designate this
8 exhibit as 3.4 Revised and provide the reporter with
9 a copy reflecting the change.

10 JUDGE ALBERS: Thank you.

11 BY MR. FLYNN:

12 Q. Mr. Nelson, I show you a document
13 previously marked as Applicants' Exhibit 13.0,
14 Supplemental Direct Testimony of Craig D. Nelson.
15 Is this a copy of your supplemental testimony?

16 A. Yes, it is.

17 Q. Is the information provided in this exhibit
18 true and correct to the best of your knowledge?

19 A. Yes.

20 Q. I show you a document previously marked as
21 Applicants' Exhibit 13.1 in Public and Proprietary
22 versions. Was this exhibit prepared by you or under

1 your direction and supervision?

2 A. Yes.

3 Q. And is the information reflected on this
4 exhibit true and correct to the best of your
5 knowledge?

6 A. Yes.

7 Q. I show you a document previously marked as
8 Applicants' Exhibit 13.2. Was this exhibit prepared
9 by you or under your direction and supervision?

10 A. Yes.

11 Q. And is the information reflected thereon
12 true and correct to the best of your knowledge?

13 A. Yes.

14 Q. Does the Company still seek proprietary
15 treatment for Exhibit 13.2?

16 A. No.

17 Q. I show you a document previously marked as
18 Applicants' Exhibit 13.3 in Public and Proprietary
19 versions. Was this document prepared by you or
20 under your direction and supervision?

21 A. Yes.

22 Q. And is the information provided thereon

1 true and correct to the best of your knowledge?

2 A. Yes.

3 Q. Show you a document previously marked as
4 Applicants' Exhibit 13.4. Was this exhibit prepared
5 by you or under your direction and supervision?

6 A. Yes.

7 Q. Is the information provided thereon true
8 and correct to the best of your knowledge?

9 A. Yes.

10 Q. I show you a document previously marked as
11 Applicants' Exhibit 23.0, Rebuttal Testimony of
12 Craig D. Nelson. Is this a copy of your rebuttal
13 testimony in this case?

14 A. Yes.

15 JUDGE ALBERS: Mr. Flynn, if I can interrupt
16 you for a minute, did you say 13.3 had Confidential
17 and Public versions?

18 MR. FLYNN: Yes.

19 JUDGE ALBERS: Thank you. I wanted to make
20 sure I got that right.

21 BY MR. FLYNN:

22 Q. Do you have any changes to make to

1 Applicants' Exhibit 23.0?

2 A. Yes, two typo changes.

3 Q. Which are?

4 A. The first one is on page 15.

5 Q. All right. We will give the parties a
6 moment to get there.

7 A. Line 322. The first word on line 22 is
8 "reflected," please strike the "ed" to make the word
9 "reflect."

10 Q. All right. And the other change?

11 A. Is on page 20, line 451, the second word in
12 that question is "such." Please strike the "C".

13 Q. Is the Company still seeking confidential
14 treatment for the information reflected on page 13,
15 lines 294 and 95?

16 A. No.

17 Q. And is the Company still seeking
18 confidential treatment of --

19 JUDGE ALBERS: Can I interrupt for one minute?
20 I am sorry, my pagination is off from what you have.

21 MR. FLYNN: What we are looking at is the last
22 sentence of a question that is, "Please describe the

1 additional savings," and on lines 294 and 295 of my
2 version there is a figure of \$33 million that was
3 initially filed on a proprietary basis for which the
4 Company is no longer seeking proprietary treatment.

5 Q. And then, sir, on page 14 in the paragraph
6 beginning on line 298 and ending on line 304, is the
7 Company still seeking confidential information or
8 confidential treatment of the information reflected
9 in that paragraph?

10 A. No, it is not.

11 MR. FLYNN: And, Judge, that's the answer to
12 the question have you modified your revenue
13 requirement comparison to reflect these additional
14 savings.

15 JUDGE ALBERS: That entire answer is public?

16 MR. FLYNN: That entire answer is public. We
17 will provide to the reporter a revised Exhibit 23.0
18 reflecting the changes Mr. Nelson has made on the
19 stand and the change in proprietary status of the
20 information he just discussed.

21 JUDGE ALBERS: Okay. Thank you.

22 BY MR. FLYNN:

1 Q. Sir, I show you a document marked as
2 Applicants' Exhibit 23.1. Was this exhibit prepared
3 by you or under your direction and supervision?

4 A. Yes, it was.

5 Q. And is this information reflected on this
6 exhibit true and correct to the best of your
7 knowledge?

8 A. Yes, it is.

9 Q. Is the Company still seeking proprietary
10 treatment of Exhibit 23.1?

11 A. No.

12 Q. I show you a document previously marked as
13 Applicants' Exhibit 23.2 in Public and Proprietary
14 versions. Was this exhibit prepared by you or under
15 your direction and supervision?

16 A. Yes, it was.

17 Q. Is the information reflected on this
18 exhibit true and correct to the best of your
19 knowledge?

20 A. Yes.

21 Q. I show you a document previously marked as
22 Applicants' Exhibit 41.0, Surrebuttal Testimony of

1 Craig D. Nelson. Is this a copy of your surrebuttal
2 testimony in this case?

3 A. Yes, it is.

4 Q. Do you have any changes to make to that
5 testimony at this time?

6 A. Yes, three minor changes, two to the
7 testimony and one to the exhibit. The first change
8 is on page 6, my testimony, line 125, and it is the
9 question that says, "Please discuss Applicants'
10 Exhibit 41.2, Case B." It should read 41.1.

11 Q. Do you have any other changes?

12 A. Yes. On the next page on line 159, and
13 that line reads, "Just as in Case A, Applicants'
14 Exhibit 41.2, Case B," again the 41.2 should be
15 changed to 41.1. Those are all of the changes to
16 the testimony.

17 Q. With those changes is this testimony true
18 and correct to the best of your knowledge?

19 A. Yes, it is.

20 Q. Lastly, I show you a document previously
21 marked as Applicants' Exhibit 41.1. Was this
22 exhibit prepared by you or under your direction and

1 supervision?

2 A. Yes, it was.

3 Q. And is the information reflected on this
4 exhibit true and correct to the best of your
5 knowledge?

6 A. Yes, it is, with one typo correction.

7 Q. Okay.

8 A. On the second page of that exhibit which is
9 Exhibit 41.1, Case B, if you look at the footnote at
10 the bottom where it says in bold "Same assumptions
11 as ICC Staff Schedule 18.1, Case" and there is a
12 blank, "A" should be inserted in there. So it
13 should read "Same assumptions as ICC Staff Exhibit
14 18.1, Case A" except for the highlighted changes.

15 Q. Well, I believe the copy provided for the
16 record already has that in it.

17 A. Oh, thanks.

18 MR. FLYNN: It is still disconcerting. You
19 should have looked at the document I showed you. I
20 want to take a second here and make sure I get these
21 right.

22 (Pause.)

1 At this time, Your Honor, I move for the
2 admission of Applicants' Exhibits 3.0, 3.1, 3.2,
3 3.3, 3.4 Revised in Public and Proprietary version,
4 13.0, 13.1 in Public and Proprietary versions, 13.3
5 in Public and Proprietary versions, 13.4 in Public
6 and Proprietary versions, 23.0 Revised in Public and
7 Proprietary versions, although I note that some of
8 the changes we made to this testimony this morning
9 were to change the proprietary status of some of the
10 information which have been marked proprietary but
11 not all of it. Exhibit 23.1, Exhibit 23.2 in Public
12 and Proprietary versions, Exhibit 41.0 Revised and
13 Exhibit 41.1.

14 JUDGE ALBERS: Could you just briefly identify
15 the nature of the information you are seeking kept
16 proprietary?

17 MR. FLYNN: It falls into a few categories.
18 Some of the information, I believe it is still
19 confidential in Applicants' Exhibit 23.0, the
20 rebuttal testimony, relates to certain gas supply
21 arrangements. And the other information relates to
22 specific financial forecasts for Illinois Power as

1 well as the nature of -- though we have made public
2 the amount of synergies, the specific breakdown of
3 those synergies and what functions within Illinois
4 Power would be affected, we still seek confidential
5 treatment for it.

6 JUDGE ALBERS: Okay. Is there any objection to
7 any of these exhibits with the confidential
8 treatment?

9 MS. SATTER: Not from the AG.

10 MR. FOSCO: No.

11 JUDGE ALBERS: Hearing no objection, then all
12 of the exhibits and attachments thereto identified
13 by Mr. Flynn are admitted into the record.

14 (Whereupon Applicants'
15 Exhibits 3.0, 3.1, 3.2,
16 3.3, 3.4 Revised in
17 Public and Proprietary
18 version, 13.0, 13.1 in
19 Public and Proprietary
20 versions, 13.3 in
21 Public and Proprietary
22 versions, 13.4 in

1 Public and Proprietary
2 versions, 23.0 Revised
3 in Public and
4 Proprietary versions,
5 Exhibit 23.1, Exhibit
6 23.2 in Public and
7 Proprietary versions,
8 Exhibit 41.0 Revised
9 and Exhibit 41.1.)

10 MR. FLYNN: Mr. Nelson is tendered for cross
11 examination.

12 MS. SATTER: I will start.

13 CROSS EXAMINATION

14 BY MS. SATTER:

15 Q. Good morning, Mr. Nelson.

16 A. Good morning.

17 Q. My name is Susan Satter. I am with the
18 Office of the Attorney General. I just have a few
19 questions for you. First, your analysis of the rate
20 impact that you present in your testimony assumes
21 that both gas and electric costs will be passed
22 through to customers in a rider mechanism, is that

1 correct?

2 A. Some type of pass through mechanism, yes.

3 Q. And that would include like monthly
4 adjustments with an annual true-up?

5 A. I don't know whether it would be monthly or
6 quarterly but, yes, we are envisioning some type of
7 pass through mechanism, rider or otherwise, with a
8 true-up.

9 Q. And you agree that the exact form of the
10 recovery of electric costs or generation costs has
11 not been settled as of today?

12 A. Settled by who?

13 Q. Well, settled by the companies, settled by
14 the ICC, and I am referring to recovery after the
15 end of the transition period which would be January
16 2, 2007.

17 A. Struggling with your question. Are you
18 talking about a specific pass through mechanism,
19 whether it has been approved by the Commission?

20 Q. Well, I am asking whether you know how
21 electric generation costs will be recovered after
22 January 2, 2007?

1 A. I don't know the specific mechanism, no.
2 But we envision a pass through mechanism with a
3 true-up.

4 Q. It is the Company's intention to pursue
5 that type of recovery mechanism?

6 A. Yes, it is.

7 Q. In your supplemental direct you described
8 how you determined various costs in your
9 presentation and specifically you added to the O&M
10 expense 2 to \$3 million in what you called a general
11 contingency. That's on page 4. Was that applied to
12 both Dynegy ownership and to Ameren ownership?

13 A. In discussing back on page 3 Applicants'
14 Exhibit 13.1, 13.1 is IP under Ameren ownership. So
15 that adjustment applies only to the IP under Ameren
16 ownership. It is our projection of O&M. It is part
17 of the projection.

18 Q. Was that figure incorporated into your Case
19 1B and Case 2B analysis?

20 A. You are talking about Exhibit 13.2?

21 Q. Yes.

22 A. As you can see from Exhibit 13.2, there is

1 Case 1B and 2B. If you look at the level of O&M and
2 G&A expense under both Ameren ownership and Dynegy
3 ownership, it's the same 310 million in both cases.
4 So we are projecting that level of O&M in both
5 scenarios.

6 Q. For 2007?

7 A. Correct, thank you.

8 Q. Does this two to three million general
9 contingency amount show up anywhere in your 13.2 and
10 the subsequent schedules?

11 A. Yes, because based on Ameren's due
12 diligence, an extensive review of IP's historic
13 costs, and its projections of IP's future costs, we
14 went through the adjustment as described in this
15 exhibit and we came up with a number of 310 million,
16 and we assume that for both IP under Ameren
17 ownership and IP under Dynegy ownership, those would
18 be the costs incurred in 2007.

19 Q. Okay. So you assumed that Dynegy would
20 also have this 2 to \$3 million general contingency?

21 A. In particular we assumed the 310 million
22 was the amount of O&M that IP would incur in 2007

1 under either ownership. It's the amount of O&M to
2 run the company, the utility, in our opinion.

3 Q. You also added an annual -- you also
4 discuss on page 4 of your supplemental direct an
5 annual two percent escalation to the O&M, is that
6 correct?

7 A. That's correct.

8 Q. So it is still unclear to me whether the
9 310 that's reflected on Exhibit 13.2 reflects these
10 adjustments or not.

11 A. They do reflect these adjustments. We did
12 our best to have -- you know, we have historic costs
13 and we analyzed those, and we had IP's projections
14 of costs and we analyzed those. We made these
15 adjustments as listed on pages 3 and 4, and
16 developed that 310 million projection. Then our
17 assumption is simply that those are the costs it
18 would take to operate IP under either ownership.

19 Q. So these two adjustments that we just
20 talked about, the 2 to \$3 million general
21 contingency and the annual escalation, those were
22 meant to capture the change that you would

1 anticipate really as a result of the passage of time
2 and the growth of the company and efficiencies and
3 things like that? Let's strike the efficiencies.

4 A. No, would you repeat the question? I don't
5 know if it encompasses all the things that you
6 listed, no.

7 Q. The two to three million general
8 contingency and the annual escalation of two
9 percent...

10 A. Yes.

11 Q. ..were intended to capture changes that
12 result in part from just the passage of time, is
13 that correct?

14 A. Correct, correct.

15 Q. Any other changes that you would want to
16 specify?

17 A. Changes in the level of expenses, changes
18 in labor rates, all those types of things are
19 included. This is the all-in costs of operating the
20 utility, our projection of what that would be. So I
21 am sure there is hundreds of things that change
22 buried in O&M and A&G.

1 Q. And this two percent was meant to capture
2 that?

3 A. It's an escalation factor meant to include
4 things like inflation and growth in prices.

5 Q. Okay, thank you. And you also assumed a
6 1.4 percent growth rate in your electric energy
7 sales, correct? That's on page 5 of your testimony.

8 A. That is correct.

9 Q. And again that was done to recognize with
10 the passage of time you would expect some growth?

11 A. Yes.

12 Q. Now, later in your testimony you assumed
13 that under Dynegy ownership IP would obtain power
14 from, you use the term, as yet undetermined
15 suppliers. Currently Illinois Power is attaining
16 its generation primarily from Dynegy affiliates, is
17 that correct?

18 A. That's correct.

19 Q. And it will continue to obtain a
20 substantial portion of its generation from Dynegy
21 affiliates through the end of 2006, is that correct?

22 A. That's correct.

1 Q. And you did not model IP taking generation
2 from Dynegy affiliates after the end of 2006, is
3 that right?

4 A. That's correct. We just identified we
5 would take power from someone and it was
6 undetermined, as you said earlier.

7 Q. In your rebuttal testimony -- I am not sure
8 we need to turn to it -- you said that Ameren uses a
9 seven-season contract for natural gas. Do you know
10 the time frame that Illinois Power currently uses
11 for its gas purchases?

12 A. No, I do not.

13 Q. And you have no opinion on whether Illinois
14 Power currently pays the kind of credit-related
15 premiums that you discuss in your testimony, is that
16 correct?

17 A. No, that's not correct. I have an opinion.

18 Q. Whether they currently do?

19 A. Yes, IP is currently incurring some
20 premiums through its credit problems on the gas
21 side, yes.

22 Q. Have you reviewed Illinois Power's past gas

1 and power purchases?

2 A. I have got information from IP's last rate
3 case where Navigant did such a review. And the
4 results of that review are that, if I remember
5 correctly, Navigant reported in testimony that the
6 majority of IP's gas supply arrangements require
7 pre-payment. Of course, that was a direct
8 reflection of the junk bond rating of IP, suppliers
9 requiring pre-payments. So it is occurring right
10 now.

11 Q. But you haven't quantified what that
12 pre-payment is?

13 A. At one point I have.

14 Q. In the past.

15 A. Correct.

16 Q. Do you have available to you your response
17 to Data Request Number AG 4.5?

18 A. Possibly. Yes, I do.

19 Q. And does that question ask you in reference
20 to Applicants' Exhibit 23.0, page 6, lines 131 to
21 134, "Is it Mr. Nelson's opinion that IP pays
22 premium prices to natural gas and/or power suppliers

1 in any or all of the years 2002, 2003 and through
2 June 30, 2004? If so, please state to what extent
3 IP paid premiums over what would have been available
4 to it had IP been owned by an investment grade
5 parent for each year or years"?

6 A. I am sorry, did you just repeat the
7 question?

8 Q. I just read the question.

9 A. Yes, I agree it says that.

10 Q. And tell me if I am reading the response
11 correctly. "My statement addressed future years,
12 not the past. (I assumed IP would continue with a
13 non-investment grade credit rating under Dynegy
14 ownership.) I express no opinion on prior years"?

15 A. Correct.

16 Q. And that's still your answer?

17 A. No, you have asked me a question earlier
18 and I have expressed an opinion on prior years.

19 Q. So what you are saying now is inconsistent
20 with what you have answered in this data request?

21 A. I said in my testimony that I express no
22 opinion on prior years. Pointing to those lines in

1 my testimony was a reference to the future. You
2 asked me a question just now about the past and I
3 expressed an opinion. So my answer is correct in
4 the data response and I believe my answer is correct
5 on the stand.

6 Q. So you had an opinion but you did not
7 disclose it in this data request response because
8 you believed that you could answer the question in
9 such a way as to not disclose that?

10 A. I believe I answered the question directly.
11 The question was about my testimony and what I
12 expressed an opinion on, and I answered it
13 correctly.

14 Q. And the quantification for the
15 credit-related savings is what you have presented
16 for the future, is that correct?

17 A. That is correct.

18 Q. And you are assuming it would be the same
19 currently?

20 A. I don't know whether it is the same
21 currently.

22 Q. You don't know what it is currently?

1 A. I have not analyzed what it is currently.

2 Q. But you still have an opinion?

3 A. I have an opinion because, as I have told
4 you --

5 Q. Well, that was my question, if you have an
6 opinion. Let me ask you a couple of questions on
7 41.1. You have a line EBIT which I believe is in
8 all the case presentations that you make. The EBIT,
9 do you believe that that reflects the effect of the
10 added adjustment of capital structure changes, cost
11 of capital changes that you would anticipate under
12 Ameren ownership?

13 A. Yes, it does.

14 Q. Does it also --

15 A. I am sorry, could you restate that
16 question? Make sure I fully understood it.

17 Q. Does the EBIT line capture the effect of
18 the added adjustment to rate base, capital structure
19 changes, and the cost of capital changes that you
20 would anticipate under Ameren ownership?

21 A. Yes, ma'am, thank you.

22 Q. And let me add one more question to that.

1 Does it also include other tax effects resulting
2 from the added adjustment? Are there other taxes
3 that might be affected by that added adjustment, do
4 you know?

5 A. Well, you will have to be more specific.
6 You have to tell me what adjustment you are talking
7 about and what taxes.

8 Q. Well, was it your intent to incorporate all
9 effects?

10 A. Yes. I think the EBIT listed on 41.1, Case
11 A and B, incorporates all the effects of taxes.
12 Keep in mind that EBIT is an acronym for earnings
13 before interest and taxes, so there is no tax impact
14 in that number, income tax impact.

15 Q. No income tax impact but there might be
16 some investment-related impact?

17 A. Well, I am sorry. Let me change my answer.
18 This is a revenue requirements comparison. So what
19 we are trying to solve for are the total revenue
20 requirements related to Ameren ownership versus
21 Dynegy ownership, and let me correct what I just
22 said. The EBIT does include a gross-up for income

1 taxes related to the capital requirements under
2 Ameren ownership and Dynegy ownership.

3 Q. In your surrebuttal testimony you mention
4 the analysis of Richard Goldberg, Scott Glaeser and
5 Mr. Kingston. Can you tell me whether you
6 communicated with any of those individuals before
7 you filed your direct testimony?

8 A. Absolutely. I communicated with
9 Mr. Kingston and Scott Glaeser, but I did not with
10 Dr. Goldberg.

11 Q. So you communicated with them before you
12 filed your direct testimony?

13 A. Yes.

14 Q. And what about your rebuttal testimony?
15 Did you have a second or an additional
16 communication?

17 A. I know I communicated with the gas supply
18 people, including Mr. Glaeser. I am not sure
19 whether I had another discussion with Mr. Kingston
20 prior to rebuttal. I talked to him occasionally. I
21 don't know when -- when I talked to him last.

22 MS. SATTER: Okay, thank you. I have no

1 further questions.

2 JUDGE ALBERS: Staff indicated they had some
3 questions.

4 MR. FOSCO: Yes.

5 CROSS EXAMINATION

6 BY MR. FOSCO:

7 Q. Good morning, Mr. Nelson.

8 A. Good morning.

9 Q. Carmen Fosco. I represent Staff. I have a
10 few questions for you this morning.

11 Your exhibit -- your surrebuttal testimony
12 on pages 4 and 5, you indicate that Exhibit 41.1 is
13 comparable to the revenue requirement exhibit
14 presented in your rebuttal testimony except for two
15 changes, one of which is the inclusion of what you
16 call a more rigorous and revised estimate of
17 credit-related savings as described in the
18 surrebuttal testimony of Dr. Goldberg, is that
19 correct?

20 A. That's correct.

21 Q. At that same point in your surrebuttal you
22 go on, I believe, to explain that the revenue

1 requirement comparison presented in Exhibit 41.1 of
2 your surrebuttal testimony reflects Dr. Goldberg's
3 analysis that purchased power and gas costs under
4 Dynegy ownership would be 46 million higher than
5 they would be under Ameren ownership rather than the
6 42 million estimate that you previously presented,
7 is that correct?

8 A. That's correct.

9 Q. I have looked through your surrebuttal and
10 I don't see any further discussion of credit-related
11 savings so -- is that correct? I mean you discuss
12 what you do with Dr. Goldberg's analysis, but I
13 don't see any further analysis of your methodology
14 in your surrebuttal testimony.

15 A. I would have to check. Do you want me to
16 do that now?

17 Q. Or would you accept subject to check that
18 that's not there? Really, I guess, my next question
19 is the main point or my main question. It is,
20 assuming that Dr. Goldberg's analysis in surrebuttal
21 testimony is not stricken, is the Company relying
22 exclusively on his credit-related savings analysis

1 versus your previously expressed credit-related
2 savings analysis?

3 A. No, I wouldn't say that at all. He
4 discusses the same three types of credit-related
5 savings that I did back in my earlier testimony. As
6 I said, his is a more rigorous estimate of that
7 savings than mine.

8 Q. You will agree with me, will you not, that
9 Dr. Goldberg does not at all rely upon the same
10 debtor or credit spread for debt issues that you
11 rely on in your analysis, is that correct? He has a
12 different analysis?

13 A. What credit spread are you referring to?
14 He certainly relied on the credit ratings of the
15 bonds to do his analysis, yes. IP's credit rating,
16 IP's bond ratings, Illinova's bond ratings as
17 compared to Ameren's. So, yes, he did rely on bond
18 ratings, as I did.

19 Q. He does not rely upon the difference in
20 yield to worse between Dynegy 2012, 8.725 percent
21 senior unsecured bonds (yield to worse equals 9.24
22 percent) and AmerenUE 2013, 4.65 percent first

1 mortgage bonds (yield to worse equals 4.95 percent
2 as of February 12, 2004), isn't that correct?

3 A. I don't remember seeing that in his
4 testimony, that's correct, that specific
5 calculation. However, he did rely -- his three
6 calculations of savings do address the three areas
7 that I identified in my testimony.

8 Q. But would you agree with me that your
9 calculation of the amount of credit-related savings
10 is tied explicitly to the difference in those two
11 instruments?

12 A. No, it is not.

13 Q. It wasn't or it is not now?

14 A. No, it is not. It wasn't before either.
15 If you remember my testimony, I use an example based
16 on a Staff witness to describe a major component of
17 my savings. And I am sorry the Staff witness's name
18 escapes me for the moment, but I went through a
19 calculation the same as that Staff witness on
20 pre-payment requirements for junk bond-rated
21 companies. And I used 60 days and I used the
22 weighted cost of capital and I came up with a

1 number, I believe it was, 19 million related to the
2 credit-related savings because I clarified in my
3 testimony that it was simply one component of the
4 total credit-related problems and additional costs.
5 So, no, I don't rely entirely upon the credit
6 spread.

7 Q. But the only explanation you had given of
8 how you arrived at 42 million was by taking
9 approximately 4.7 percent -- 4.7 percent of the 900
10 million of estimated purchased power and gas costs?

11 A. No.

12 Q. Can you point to me in your direct,
13 supplemental direct or rebuttal, other than where
14 you explained how you got to the 42 million, other
15 than that?

16 A. No, I just explained to you that was not
17 all I relied upon. I also did a calculation that
18 showed a major component of that and pointed out
19 that that was simply one component.

20 Q. That wasn't my question, sir. My question
21 was, did you not rely upon the 4.7 percent credit
22 spread and offer only -- let me strike that. Let me

1 ask it another way. Can you point to me in your
2 testimony where any other calculation, other than
3 the 4.7 percent of 900 million, gets us to
4 approximately 42 million?

5 A. I will agree that I use that credit spread
6 calculation to calculate the total credit-related
7 costs of IP buying under Dynegy versus Ameren
8 ownership.

9 Q. And I guess where I was going with this
10 whole line of questioning was, is that still the
11 Applicants' position as to how the Commission should
12 consider getting to that number or are Applicants
13 relying, assuming it is not stricken, on
14 Mr. Goldberg's different and more robust analysis to
15 get to 46 million? I am just trying to clarify
16 that.

17 A. I think my methodology is a good
18 methodology to calculate all the credit-related
19 differences. I think Dr. Goldberg's methodology is
20 a better one because it is more rigorous and, as you
21 can see, 46 versus 42, they come up with
22 approximately the same answer. So the Company's

1 position is 46, assuming his testimony is kept
2 alive. If not, I think my testimony supports 42
3 million.

4 Q. Thank you. On page 9 of your direct
5 testimony you have a discussion of Illinois Power's
6 anticipated filing at the time you prepared this of
7 a request for an increase in gas base rates. Do you
8 see that?

9 A. Which line are you talking about?

10 Q. Lines 18 -- it starts at lines 185, that
11 whole answer goes through line 191.

12 A. Yes, I see that.

13 Q. The last sentence of that answer states
14 that, "Other than this request," referring to
15 Illinois Power's request for an increase in its gas
16 base rates, "Illinois Power will not request any
17 increases in its gas base rates to be effective
18 prior to January 1, 2007." Do you see that?

19 A. Yes, I do.

20 Q. Is that a commitment or an indication of
21 intent on behalf of Ameren?

22 A. It's a commitment subject to a transaction

1 closing and all of our conditions as we have laid
2 them out.

3 Q. That is a commitment, though, I am just
4 trying to clarify?

5 A. Subject to our filing and everything we
6 asked for, yes.

7 JUDGE ALBERS: Now, wait a minute. I have a
8 question then. Everything you asked for?

9 THE WITNESS: Yeah.

10 JUDGE ALBERS: Just in case the Commission asks
11 me.

12 THE WITNESS: That is the commitment given the
13 deal put on the table.

14 JUDGE ALBERS: All right. If for whatever
15 reason the Commission does not give you one of the
16 things you asked for, the commitment is off, if you
17 are able to say from the witness stand.

18 THE WITNESS: I don't think I can respond for
19 the Company in that scenario.

20 JUDGE ALBERS: Okay. That's fine. I am just
21 trying to clarify it so I can have an answer for the
22 Commission if I am asked. That's all.

1 THE WITNESS: I don't know, sir.

2 JUDGE ALBERS: That's fine.

3 BY MR. FOSCO:

4 Q. You used the year 2007 for purposes of your
5 revenue requirement comparison, is that correct?

6 A. Yes, sir.

7 Q. What was the basis or reason for your using
8 that year?

9 A. It's the year, first year, in which rates
10 are unfrozen. So there really cannot be a direct
11 customer impact from the transaction on bundled
12 rates, electric bundled rates, prior to that year.

13 Q. Thank you. If you could refer to Exhibit
14 3.4 of your direct testimony and I am correct in
15 describing this as basically six pages of a
16 narrative description of your revenue requirement
17 comparison, followed by three different case
18 scenarios, sort of revenue requirement comparison
19 statements, is that correct?

20 A. That's correct.

21 Q. On the first page of your narrative under
22 rate base, it states that --

1 JUDGE ALBERS: Careful, Mr. Fosco, is this a
2 proprietary document?

3 MR. FOSCO: Not my copy. I am not referring to
4 the schedules.

5 JUDGE ALBERS: I just want to make sure we
6 didn't put in the public record proprietary
7 information.

8 MR. FLYNN: Which exhibit are we looking at?

9 MR. FOSCO: 3.4, the first page. And am I
10 correct that that page does not contain any
11 proprietary information?

12 MR. FLYNN: You just said narrative and I --

13 MR. FOSCO: Well, it is not a schedule. It's
14 text.

15 THE WITNESS: We have removed the proprietary
16 and confidential from Case 1, 2 and 3. I am not
17 sure we have from the narrative.

18 MR. FOSCO: Was the narrative proprietary?

19 THE WITNESS: I don't know.

20 JUDGE ALBERS: Sorry. I am just trying to
21 avoid any problems down the road.

22 MR. FLYNN: Well, in the exhibits we just

1 offered for the record we did not request
2 proprietary treatment of 3.4 and I don't have any
3 indication that we did previously.

4 JUDGE ALBERS: Well, so much for my notes.

5 MS. SATTER: I am sorry, are they -- is 3.4
6 considered proprietary?

7 MR. FOSCO: No.

8 MS. SATTER: And 3.3?

9 MR. FLYNN: 3.3, no.

10 MR. FOSCO: 3.3 is the narrative. It's a
11 contract.

12 JUDGE ALBERS: My apologies. For whatever
13 reason I had that marked as proprietary, and my
14 apologies if I am mistaken.

15 BY MR. FOSCO:

16 Q. Mr. Nelson, on the first page of your
17 Exhibit 3.4 under the heading Rate Base, the first
18 sentence there indicates that in each -- in the
19 comparison in each case Illinois Power's net plant
20 original costs less depreciation is assumed to be
21 1.9 billion at 12/31/06, do you see that?

22 A. Yes, I do.

1 Q. And I think we have just established that
2 the proprietary nature of their cases have been
3 removed. And my question is that number does not
4 seem to agree with the 1.6 billion rate base shown
5 on your schedules. Either can you explain the
6 difference or confirm that that's a typo in this
7 one?

8 A. It's not a typo. It's a rounding. In that
9 first sentence I am describing the rate base under
10 Ameren ownership for each of the three cases and I
11 just took the shortcut and rounded the 1.9 billion.
12 If you look on Case 1, for example, under Ameren
13 ownership you see the rate base without the
14 transaction is 1.6 billion and then the net change
15 through the step-up in rate based from the
16 elimination of deferred taxes is 310 million,
17 amounting to 1,910,000,000. In my narrative I
18 rounded that to 1.9 billion.

19 Q. And for Dynegy in each case it stays at 1.6
20 billion?

21 A. That's correct.

22 Q. Now, under the Capital Structure heading in

1 Exhibit 6 -- I am sorry, 3.4, actually I don't see
2 it but I thought you had said it here, your figure
3 for debt in your capital structure combines both
4 debt and preferred stock, is that correct?

5 A. I believe it does. Let's see. Yes, it
6 does. If you look on the bottom of that paragraph
7 under capital structure, the balance consisting of
8 long term debt and preferred stock which I refer to
9 collectively as debt. So, yes, it does.

10 Q. There is a line in your revenue requirement
11 comparison of interest tax savings. Could you
12 briefly describe what that represents?

13 A. Yes, I can. Looking at Case 1 as an
14 example, under Ameren ownership, the calculation
15 takes the weighted cost of equity and debt, equity
16 at ten and a half percent, debt at six percent, and
17 does a weighted average and comes up with a return
18 on rate base of 8.5 percent. That weighted average
19 cost of capital of 8.5 percent does not include a
20 tax benefit for interest deductions. And so the 20
21 million of interest tax savings does reflect the tax
22 benefit from the interest expense deduction. And

1 then you will notice on that schedule 162 million is
2 the return on rate base before the tax benefit
3 produced by 20 million of tax benefit. That does
4 equal the after tax revenue requirement under the
5 41.

6 Q. And would I be correct that the interest
7 tax savings is the rate base amount times the
8 percent of debt that makes up capital structure
9 times the rate for that debt times the tax rate
10 rounded?

11 A. I am sorry, I was jumping. But I can tell
12 you what it is. It's the rate base amount of one
13 billion nine one ten times 45 percent times six
14 percent. That gives you an interest component and
15 then the tax rate is approximately 40 percent, so it
16 is 40 percent times that number.

17 Q. That was basically what I was asking.

18 A. Sorry, I was thinking ahead. I apologize.

19 Q. Now, my question is the return on preferred
20 stock is not an interest expense, isn't that
21 correct?

22 A. That's correct.

1 Q. So actually to the extent that your
2 calculation includes preferred stock, that's not an
3 entirely correct way of calculating that?

4 A. It is not entirely accurate, but it is a
5 very small component.

6 Q. On page 2 of your surrebuttal testimony,
7 and actually I think also on pages 7 and 8, you
8 testified that Ameren's acquisition will have a
9 beneficial impact on rates based upon your analysis,
10 correct?

11 A. That's correct.

12 Q. Your analysis and testimony in this regard
13 is premised on an allocation of any and all savings
14 resulting from the proposed reorganization to
15 ratepayers, is that correct?

16 A. I believe that's correct. We have
17 identified 33 million of savings related to the
18 acquisition and we have incorporated that on Exhibit
19 41.1. And then just going through the various
20 categories of savings in my mind to answer your
21 question, another type of savings relates to the
22 cost of debt, and my Exhibit 41.1 assumes that we

1 have taken out the high cost debt, replaced it with
2 cheaper debt, so that's incorporated into this
3 analysis. I think the answer to your question is
4 yes.

5 Q. So is it the Company's position that the
6 Commission should find that all savings associated
7 with the proposed reorganization should be allocated
8 to ratepayers? And I believe it is, but I was
9 trying to confirm that.

10 A. The reason I am hesitating is because are
11 we talking about net savings or savings? Obviously
12 we have asked for some acquisition adjustment
13 amortization which includes some of the costs to
14 achieve the savings.

15 Q. I wasn't trying to be tricky. I mean to
16 the extent there is a net amount, I am not trying to
17 get the individual amounts but, yes, as a net
18 effect.

19 A. I guess it was Mr. Baxter's testimony,
20 Mr. Lyon's testimony, that talked about the costs we
21 were trying to recover through that acquisition
22 adjustment. But for that, all the other savings are

1 reflected on the schedule.

2 Q. And they are always shown as going to
3 offset rates that ratepayers would pay, correct?

4 A. Yes, the 33 million offsets and then the
5 six percent reflects the full reduction in interest
6 expense. And then, I mean, the other major category
7 of savings is the purchased power and gas, and we
8 are reflecting that level of savings here as well.
9 So the three components of savings are reflected in
10 its revenue requirements.

11 Q. And I guess just as a final clarification,
12 it is not the Company's position that it should get
13 to keep, for instance, the savings that it believes
14 it will achieve on purchased power and gas?

15 A. That's correct.

16 MR. FOSCO: Thank you, Mr. Nelson. I have no
17 further questions.

18 MS. SATTER: Your Honor, I had asked some
19 questions about taxes and I wasn't able to specify
20 the exact taxes and I have got that reference now.
21 Can I ask a couple more questions just to clarify?

22 JUDGE ALBERS: Typically no, but is there any

1 objection?

2 MR. FLYNN: No, there is no objection, Your
3 Honor.

4 JUDGE ALBERS: All right. Go ahead.

5 MS. SATTER: Thank you.

6 CROSS EXAMINATION (Continued)

7 BY MS. SATTER:

8 Q. Mr. Nelson, I had asked you whether the
9 EBIT figure on your case studies includes certain
10 taxes, and let me just ask if you recall whether
11 they would reflect the loss of the flow back of
12 excess deferred income taxes, if you know?

13 A. Please explain to me what you mean by the
14 loss of the flow back of the excess deferred.

15 Q. If you don't know, then it seems to me you
16 didn't do it, is that a fair assumption?

17 A. No, it is not a fair assumption. You are
18 going to have to explain to me what the flow back is
19 before I can tell you whether it is incorporated.

20 Q. I believe that under the -- when you
21 eliminate the EBIT, there are other investment taxes
22 that are also associated with it, and you would get

1 a benefit from those that are characterized as
2 excess deferred income taxes. That would then go
3 back to be credited against rates.

4 A. Your question doesn't make sense to me.

5 Q. Okay. If you didn't do it or you don't
6 understand it, I think that you can just answer me
7 that you didn't incorporate it.

8 MR. FLYNN: Objection.

9 A. What --

10 MR. FLYNN: Objection.

11 A. I don't have any --

12 MR. FLYNN: No, wait.

13 JUDGE ALBERS: I want to hear the objection,
14 please.

15 MR. FLYNN: That's your signal. Foundation, I
16 think the witness is asking counsel to explain what
17 "it" is. So he cannot answer whether he did "it"
18 until we know what "it" is.

19 JUDGE ALBERS: I agree with you, Mr. Flynn.

20 BY MS. SATTER: I am not going to testify,
21 okay.

22 Q. The "it" is loss of flow back of excess

1 deferred income taxes. Do you know what that is?

2 A. I have asked you to define what that is.

3 Q. I will not testify here. I am asking you.

4 If you know what it is, you can tell me. If you

5 don't know what it is, then we will move on.

6 A. I don't understand your question.

7 Q. Okay. Do you know what excess deferred

8 income taxes are?

9 A. I know what deferred income taxes are, and

10 I don't know what you are talking about excess

11 deferred taxes, the difference between a tax rate,

12 for instance, 48 percent and 46 percent due to a

13 statutory change or not. So you would have to

14 clarify that question as well.

15 Q. Okay. So then if I just asked you do you

16 know what excess deferred income taxes are, your

17 answer would be no?

18 A. No, I do know in the context of a broader

19 question. You have to specify what is the cause of

20 the excess. I have just given you an example, when

21 the statutory federal income tax rate changed from

22 48 to 46 percent, the terminology for that

1 differential was excess deferred taxes. I do
2 understand that question. I understand completely
3 what that excess is. I am asking you to define what
4 your excess is.

5 Q. Let me ask you whether you identified any
6 excess deferred income taxes resulting from the
7 transaction?

8 A. The deferred taxes that were eliminated
9 were identified, and Mr. Warren will have to
10 identify, explain to you, what was in that 310
11 million in deferred taxes.

12 Q. So you have not identified any excess
13 yourself?

14 A. I have reviewed some of his work, but I
15 would defer to him as to the make-up of that \$310
16 million. After all, he did the testimony on that.

17 Q. Do you know what investment tax credits
18 are?

19 A. Yes, I do.

20 Q. Do you know whether there was an effect on
21 Illinois Power's investment tax credits as a result
22 of the proposed transaction?

1 A. Again, that's Mr. Warren's testimony.

2 Q. So you can't tell me sitting here today?

3 A. I don't know. I guess we could look at the
4 data request that he did that I might have handy and
5 see if there is an investment tax credit component
6 in there. But without doing that, I don't know.

7 MS. SATTER: Okay, thank you.

8 JUDGE ALBERS: Do you have any questions,
9 Mr. Robertson or Mr. Wu? I just have two or three.

10 EXAMINATION

11 BY JUDGE ALBERS:

12 Q. It is Ameren's position that IP's bundled
13 rates would decrease following the closing of the
14 transaction, correct?

15 A. No, sir, I don't think that's our position.
16 Our position is that revenue requirements would be
17 less under Ameren ownership than they would be under
18 Dynegy ownership.

19 Q. All right. Can you say whether or not you
20 expect IP's delivery service rates to increase or
21 decrease as a result of the transaction?

22 A. I am hesitating because I believe I

1 answered a data request on that subject, and I
2 believe the response, which is a true response, is
3 we have not analyzed the effect on components. We
4 have looked at the total overall revenue
5 requirements, but we have not looked at it on a
6 delivery service basis versus a transmission basis
7 versus a generation versus.

8 Q. I don't see data request responses unless
9 someone attaches them to their testimony. So can
10 you provide any more detail than that?

11 A. As to -- I could if given a few minutes to
12 find it.

13 Q. Well, okay, I am interested. It was your
14 data request response?

15 A. Yes.

16 (Pause.)

17 Okay. It was a data request from Exelon,
18 Number 1.26, and it reads, the question, "Regarding
19 Applicants' Exhibit 6.4 attached to the direct
20 testimony of James L. Warren, what effect will the
21 net change of the 310 million to the rate base of
22 Illinois Power's transmission and distribution

1 revenue requirements, all else being equal," and my
2 response on June 2, 2004, was, "Applicant has not
3 performed any analysis of the impact of individual
4 components of the transaction to rate base since
5 elements of the entire transaction would have to be
6 taken as a whole to complete the transaction. In
7 addition, the above amounts reflect the estimated
8 deferred tax impact on all components of the
9 business, gas, electric transmission, electric
10 distribution, and no specific work has been done to
11 assign the deferred tax impact of each component."
12 So we haven't done the specific analysis to break it
13 out into the pieces to distribution, transmission
14 and generation.

15 Q. Okay. And you personally could not say
16 whether or not delivery service rates would go up or
17 down and to the best of your knowledge no one from
18 Ameren could either? Two questions in one but I
19 think you can --

20 A. We have not done the complete study to
21 break it down into those components.

22 Q. Is there any particular reason why that

1 study wasn't done?

2 A. None that I can think of, no, just the
3 added work. We think we have a case before the
4 Commission that shows that the revenue requirements
5 are less on an overall basis and that's a very good
6 reason to approve the transaction.

7 Q. Okay. I tell you why I am asking.
8 Hypothetically it would seem that if -- I believe
9 Mr. Gorman made this argument -- and if delivery
10 services rates went up and bundled rates remained
11 the same or went down or maybe evened out a little
12 bit, but if delivery service rates went up, would
13 that not impact competition?

14 A. And I responded to some of that in my
15 testimony and just a couple things from memory, we
16 do believe we will have buying power savings on both
17 the gas and electric side. So I think that will
18 help competition in that it sets the bar lower for
19 competitors. So an industrial customer would have a
20 choice to come on our delivery service rates and get
21 the full bundled rate with the buying power savings
22 or they could have the choice to go with an ARES.

1 In that case I think the bar would be set lower
2 because of the savings in electricity and gas that
3 we can achieve. So I think it will have a positive
4 impact on competition, not a negative.

5 Q. Even if delivery service rates went up
6 hypothetically?

7 A. Hypothetically if they did -- because there
8 is an offset. Assuming they went up on the delivery
9 service side, there is a very positive impact on the
10 purchased power and gas side that will help
11 competition.

12 JUDGE ALBERS: Okay, thank you.

13 MR. FOSCO: Your Honor, I am sorry, can I throw
14 myself at Mr. Flynn's mercy here? I skipped over
15 one question by mistake.

16 MR. FLYNN: I get to rule on requests now?

17 JUDGE ALBERS: Well, we all appreciate everyone
18 gets their turn.

19 MR. FLYNN: I have no objection.

20 JUDGE ALBERS: All right.

21 MR. FOSCO: All right. I apologize.

22

1 CROSS EXAMINATION (Continued)

2 BY MR. FOSCO:

3 Q. Mr. Nelson, on page 9 of your rebuttal
4 testimony you talk about future savings for the
5 purchases of gas and electric supply and indicate
6 that there would be no documents to support a
7 specific amount because it is an amount that's going
8 to happen in the future. My question is, are you
9 aware of any base line or benchmark that can be used
10 to assess whether these asserted savings are
11 actually achieved in the future?

12 A. Yes, I am. It is difficult to prove
13 savings before or after the fact, but there are ways
14 to estimate savings before or after the fact and
15 there are benchmarks.

16 Q. I am not looking for a real long answer,
17 but can you quickly describe what a benchmark might
18 be?

19 MR. FLYNN: So for what type of savings?

20 Q. Let's deal with the gas savings first.

21 A. Yes, I have had extensive discussions with
22 our gas supply people and they have identified

1 savings in the gas side related to buying power. In
2 my testimony I have talked about an example in the
3 transportation savings with UE and CIPS that
4 amounted to \$2.6 million which equated to about a
5 4.8 percent savings, and then I have talked to our
6 gas supply people about a comparison to an index and
7 we have used the inside FERC index. We have
8 compared a CILCO purchase under AES ownership with
9 the lower credit rating to an exact match purchase
10 under Ameren ownership and identified savings of
11 three-quarters of a percent with an exact match as
12 compared to the inside FERC gas index. So it is
13 those very concrete examples that our gas supply
14 people have identified that lead us to this
15 conservative estimate of 1.5 percent.

16 Q. And my question though is, those base lines
17 or benchmarks or indexes that you just referred to
18 could be used in some fashion to assess whether the
19 savings for IP are achieved in the future to some
20 degree?

21 A. It could be used, but I told you it is
22 difficult because everybody says in their examples

1 all things being equal. All things are not equal.
2 As supply and demand in the market change, the level
3 of discount to an index may change. So, you know,
4 in one situation, even with bad credit, a company
5 like CILCO might be able to get a discount from the
6 gas index. But as demand increases in the market,
7 as supply shrinks, CILCO with much better credit may
8 not get that same discount and yet it is getting a
9 discount that's greater because of its credit rating
10 than it would otherwise. So it is difficult to
11 prove beyond any doubt that savings have been
12 achieved.

13 The only way to prove, and the reason I
14 said specifically support, the only way to prove a
15 savings is to have -- I will use an example of IP --
16 have a Dynegy owned IP with a junk bond rating right
17 beside an Ameren owned IP with an investment grade
18 rating and they would be making a purchase at the
19 same time. Of course, that is impossible. That is
20 the only way to prove it. The rest are estimates
21 with comparison indexes and the market conditions
22 change which make it difficult.

1 Q. And I asked you about gas. Are you aware
2 of any specific indexes or benchmarks that could
3 potentially be used on the electric power purchase
4 side similar to the gas?

5 A. Used to do what?

6 Q. To assess whether the estimated 1.5 percent
7 buying power or savings have been or would be
8 achieved in the future?

9 A. It would be very difficult to use an index
10 because the index has -- for instance, the synergy
11 index or PGA index is an energy only product, and
12 the product that may have been purchased in an RFP
13 or auction process is probably not going to be that
14 energy only product. It is going to be a full
15 requirements load-following with all switching risk,
16 all polar risk product. And so comparison to an
17 index is problematic.

18 MR. FOSCO: Thank you very much. And thank you
19 for accommodating.

20 JUDGE ALBERS: Do you have any redirect?

21 MR. FLYNN: We would like to take a few
22 minutes.

1 JUDGE ALBERS: Okay. Why don't we just recess
2 for about five minutes then? If you want to take a
3 break, we will go ahead and do that now.

4 (Whereupon the hearing
5 was in a short recess.)

6 JUDGE ALBERS: On the record. Mr. Flynn, did
7 you have any redirect?

8 MR. FLYNN: We just have two questions.

9 REDIRECT EXAMINATION

10 BY MR. FLYNN:

11 Q. Mr. Nelson, Ms. Satter asked you a question
12 regarding your conversations with Mr. Glaeser.
13 Would you please describe the frequency of your
14 discussions with Mr. Glaeser regarding your analysis
15 in this case?

16 A. Yes, I had many discussions with
17 Mr. Glaeser and his staff prior to filing my direct
18 testimony in regard to identifying the buying power
19 savings and credit-related savings as they relate to
20 gas. So there were many, many discussions prior to
21 the direct. And then each subsequent testimony that
22 I filed, the direct, supplemental, the rebuttal and

1 the surrebuttal, again I had discussions with the
2 gas supply people, including Mr. Glaeser and Julie
3 Hines is in the room and other gas supply people to
4 help me identify, help the Company identify, the
5 gas-related savings.

6 Q. Thank you. The Judge asked you a question
7 about the effect of this transaction on delivery
8 service rates. Would you please describe Ameren's
9 vision of rates going forward?

10 A. Yeah, the Judge asked me a question about a
11 hypothetical delivery service rate increase and
12 whether that would have a negative impact on
13 competition. And I don't think it will in that
14 Ameren's intention is that if there were a delivery
15 service rate increase, and now I am talking about
16 post-2006, a delivery service rate increase there,
17 that in the post-2006 world every customer would pay
18 the delivery service rate, whether it be bundled or
19 unbundled, and then the bundled customers would pay
20 this pass through generation component. So there
21 would not be any anti-competitive -- anything of an
22 anti-competitive nature if all delivery service

1 customers, both bundled and unbundled, were paying
2 the same delivery service rate. And that's our view
3 on how it should work.

4 Q. Does Ameren intend to raise delivery
5 service rates before 2007?

6 A. No, it does not.

7 MR. FLYNN: That's all the redirect we have.

8 JUDGE ALBERS: Okay. Any recross?

9 MR. FOSCO: None from Staff.

10 MS. SATTER: No, thank you.

11 JUDGE ALBERS: I just have one for my own
12 benefit here.

13 RE-EXAMINATION

14 BY JUDGE ALBERS:

15 Q. I have not been a part of the post-2006
16 initiative discussions in any way, shape or form.
17 And for my own benefit then is there -- is having
18 all customers pay the same delivery service rates,
19 is that a common idea among utilities or is that --
20 to the extent that you can speak to that?

21 A. It's been well vetted in the working group
22 that's working on tariff issues, and it is my

1 understanding from talking to the people that have
2 attended that group that it is a commonly accepted
3 approach, that everyone will pay the same delivery
4 service rate and then the bundled customers will pay
5 this generation component in addition to that.

6 Q. So hypothetically your bundled customer
7 would have, at least for Ameren's purposes, would
8 have two components on -- well, two major components
9 on their bill, the delivery service rate which is
10 the same throughout, and then an electric or gas
11 charge basically?

12 A. Yes, sir, that's our intent. That's how we
13 understand that many in Illinois want it to work.

14 Q. And primarily there is agreement with that
15 approach or has that been generally accepted?

16 A. In fact, I don't know of anyone that has
17 objected, and we have talked to many parties in the
18 workshop process. I don't know of any in particular
19 that have objected to that approach.

20 JUDGE ALBERS: Okay, thank you.

21 (Witness excused.)

22 JUDGE ALBERS: I believe our next witness is

1 Ms. Hathhorn and she has been sworn. Would Staff
2 wish to proceed?

3 MS. VON QUALEN: Yes, thank you.

4 DIANNA HATHHORN
5 called as a Witness on behalf of Staff of the
6 Illinois Commerce Commission, having been first duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MS. VON QUALEN:

10 Q. Good morning, Ms. Hathhorn.

11 A. Good morning.

12 Q. Please state your full name for the record.

13 A. Dianna Hathhorn. My last name is spelled
14 H-A-T-H-H-O-R-N.

15 Q. Who is your employer and what is your
16 business address?

17 A. I am employed by the Illinois Commerce
18 Commission. My business address is 527 East Capitol
19 Avenue, Springfield, Illinois 62701.

20 Q. What is your position at the Commission?

21 A. I am an accountant.

22 Q. Ms. Hathhorn, did you prepare written

1 exhibits and schedules for submittal in this
2 proceeding?

3 A. Yes, I did.

4 Q. Do you have before you a document that has
5 been marked for identification as ICC Staff Exhibit
6 8.0 which consists of 18 typewritten pages and has
7 attached Schedule 8.1, 8.2 and Attachment A?

8 A. Yes, I do.

9 Q. Did you prepare that document for
10 presentation in this matter?

11 A. Yes, I did.

12 Q. Do you have any additions or corrections to
13 make to Staff Exhibit 8.0, Schedule 8.1 and 8.2 and
14 Attachment A?

15 A. No, I do not.

16 Q. Do you also have before you a document
17 which is identified as ICC Staff Exhibit 18.0R
18 entitled Revised Unredacted Rebuttal Testimony of
19 Dianna Hathhorn?

20 A. Yes, I do.

21 Q. Does that consist of nine typewritten pages
22 and Schedule 18.1?

1 A. Yes, it does.

2 Q. And did you prepare that document for this
3 proceeding?

4 A. Yes.

5 Q. Do you have any additions or corrections to
6 make to ICC schedule or document 18.0R?

7 A. No, I do not.

8 Q. The document 18.0R has been revised since
9 it was filed on the e-Docket as 18.0, is that
10 correct?

11 A. That's correct.

12 Q. What change was made to that document?

13 A. In 18.0 on page 6, lines 114 and 115, I had
14 said that the MMC Enterprise or Marsh Risk Report
15 was attached to Dr. Haas's rebuttal testimony but it
16 was not attached to his testimony. But since then
17 it has been entered as Staff Cross Exhibit 1. So I
18 changed the reference to say that it was provided to
19 Staff as Schedule POL 1.051 and is Staff Cross
20 Exhibit 1.

21 Q. Okay, thank you. Are there any other
22 changes to Staff Exhibit 18.0R from what was

1 previously filed on e-Docket?

2 A. No.

3 Q. Is the information contained in ICC Exhibit
4 18.0R and 8.0 with attached schedules true and
5 correct to the best of your knowledge?

6 A. Yes, it is.

7 Q. If I were to ask you the same questions,
8 would your answers be the same today?

9 A. Yes.

10 MS. VON QUALEN: At this time I move for
11 admission into evidence of ICC Staff Exhibits 8.0
12 with attached schedules and 18.0R, and I have a copy
13 of 18.0R to provide to the court reporter.

14 Both the direct and the rebuttal testimony
15 of Dianna Hathhorn contain or have redacted and
16 unredacted versions. The reason that Staff has
17 requested proprietary treatment for the information
18 that was removed in the redacted versions is because
19 the Applicants had requested that information be
20 treated as proprietary.

21 JUDGE ALBERS: Okay. Should there be a public
22 version of 8.1 and Attachment A?

1 MS. VON QUALEN: I believe the public and the
2 proprietary versions are the same.

3 JUDGE ALBERS: I am sorry?

4 MS. VON QUALEN: The public -- the redacted and
5 unredacted versions of the schedules are identical.
6 There was nothing redacted from the schedules.

7 THE WITNESS: Schedule 8.2 is redacted.

8 MS. VON QUALEN: It is redacted.

9 JUDGE ALBERS: Okay. I am just going from
10 those two now. I didn't see any corresponding on
11 these --

12 MS. VON QUALEN: Right, there should be
13 corresponding schedules. Each schedule that was
14 filed publicly is also filed in the unredacted form.
15 In other words, in the list of exhibits that we
16 provided to you, it should have ICC Staff Exhibit
17 8.0 Unredacted. It should have Schedule 8.1
18 Unredacted, Schedule 8.2 Unredacted and Attachment A
19 Unredacted. The filings were identical, except that
20 the proprietary information was removed from the
21 redacted version.

22 JUDGE ALBERS: Blacked out certain numbers?

1 MS. VON QUALEN: Yes.

2 JUDGE ALBERS: All right. Now, on a similar
3 vein Schedule 8.1 looks similar to some of
4 Mr. Nelson's attachments which I believe those are
5 in the public record.

6 MS. VON QUALEN: I believe we filed Schedule
7 8.1 as a public document.

8 JUDGE ALBERS: So there should not be a
9 redacted version of 8.1?

10 MS. VON QUALEN: When we file redacted
11 testimony, if it is all public, everything goes in.
12 So the redacted version would have been the same as
13 the unredacted. In other words, when we filed
14 unredacted testimony, it contains every bit of
15 information that we have in our testimony and in our
16 exhibits. When we file redacted testimony, the only
17 information that has been removed is information
18 that was designated proprietary and has been
19 deleted. Other than that it contains all the
20 schedules and all the text.

21 JUDGE ALBERS: Okay. Let me just ask this.
22 This might be the easiest way for me to understand

1 this. Is there anything in any version of Schedule
2 8.1 that should be kept proprietary?

3 MS. VON QUALEN: No.

4 MR. FLYNN: We are in agreement.

5 JUDGE ALBERS: All right. That's a good start.
6 Is there anything in Attachment A that should be
7 proprietary?

8 MS. VON QUALEN: No.

9 JUDGE ALBERS: But there are certain things in
10 Attachment -- I am sorry, in Schedule 8.2 that you
11 at the request of the companies would like to keep
12 proprietary?

13 MS. VON QUALEN: Yes.

14 JUDGE ALBERS: And there are things in
15 schedule -- there are things in Attachment 8.0 that
16 are proprietary?

17 MS. VON QUALEN: Yes.

18 JUDGE ALBERS: And the same with 18.0?

19 MS. VON QUALEN: Yes.

20 JUDGE ALBERS: All right. With regard to all
21 of that, everything you requested be kept
22 proprietary is because the Company asked that it be

1 made such?

2 MS. VON QUALEN: That is correct.

3 JUDGE ALBERS: All right. Is there any
4 objection to the admission of any of these exhibits
5 and the proprietary designations that have been
6 requested? No. Hearing no objection, then Staff
7 Exhibit 8.0, both Public and Proprietary; Schedule
8 8.1, which is all public; Schedule 8.2, which has a
9 Public and Proprietary version; Attachment A, which
10 is all Public; Staff Exhibit 18.0 Revised, which has
11 a Public and Proprietary version, are admitted.

12 (Whereupon ICC Staff
13 Exhibits 8.0, Public
14 and Proprietary;
15 Schedule 8.1; 8.2,
16 Public and Proprietary;
17 Attachment A; 18.0R,
18 Revised, Public and
19 Proprietary, were
20 admitted into
21 evidence.)

22 MS. VON QUALEN: Ms. Hathhorn is available for

1 cross examination.

2 JUDGE ALBERS: My last question is, 18.0
3 Revised, is that on e-Docket yet or is that going to
4 be given a hard copy to the court reporter?

5 MS. VON QUALEN: I just gave a hard copy to the
6 court reporter. And for clarity, we named it 18.0R
7 and called it revised unredacted and revised
8 redacted testimony.

9 JUDGE ALBERS: Okay.

10 (Whereupon ICC Staff
11 Exhibit 18.0R, Public
12 and Proprietary, was
13 marked for purposes of
14 identification as of
15 this date.)

16 MS. SATTER: Just for consistency sake, it
17 looks like the information on 8.0, page 12, is
18 similar to what was in Mr. -- I am trying to
19 remember which witness it was. I believe it was
20 Mr. Baxter's testimony. And so when you rule on
21 that, you might want to be sure that it is
22 consistent.

1 JUDGE ALBERS: Okay. I will make a note of
2 that and make sure. I think yesterday you were
3 talking about the objection you made to certain
4 testimony. That was with Mr. Sullivan, I think.

5 MS. SATTER: Right, I am sorry. Yes, it was
6 Mr. Sullivan because it was HMAC. Thank you.

7 JUDGE ALBERS: And do the Applicants have any
8 questions for Ms. Hathhorn?

9 MR. FLYNN: We have two, I hope.

10 CROSS EXAMINATION

11 BY MR. FLYNN:

12 Q. Good afternoon, Ms. Hathhorn.

13 A. Good afternoon.

14 Q. I would like to direct you to page 6 of
15 your direct testimony. Beginning at line 29 you
16 state that Applicants' calculation cannot be relied
17 upon because the Applicants failed to provide
18 adequate support for its assumption regarding a 4.7
19 percent savings in the total cost of power and gas
20 supply due to credit-related factors. Is that what
21 you state there?

22 A. Yes, it is.

1 Q. And there are you referring to the analysis
2 that was provided to you by Mr. McNally?

3 A. Yes, that's correct.

4 Q. You did not perform an independent
5 determination, arrive at an independent
6 determination yourself, that Applicants failed to
7 provide adequate support for this particular factor,
8 is that right?

9 A. That is correct.

10 MR. FLYNN: That's all I have.

11 JUDGE ALBERS: No one else had any questions?

12 EXAMINATION

13 BY JUDGE ALBERS:

14 Q. Briefly, Ms. Hathhorn, your testimony
15 addressed Subsection B7 of Section 7-204, is that
16 correct?

17 A. Yes.

18 Q. I believe that's the adverse impact on
19 rates criteria?

20 A. That's correct.

21 Q. Have you reviewed Mr. Gorman's testimony on
22 behalf of IIEC?

1 A. It is not jumping to mind. Was that direct
2 testimony?

3 Q. I think generally he discussed concerns
4 about the impact of the reorganization on delivery
5 service rates.

6 A. I think I just read it once when it first
7 came in.

8 Q. Let me ask you this then. Have you given
9 any thought to the impact of reorganization on
10 delivery service rates and how that might tie into
11 B7?

12 A. I did not do an analysis by component.

13 Q. Any particular reason you didn't do such an
14 analysis?

15 A. Probably because I was reviewing the
16 overall impact of the transaction in response to how
17 it was presented by the Applicants.

18 Q. Okay. Have you been part of the post-2006
19 discussions at all?

20 A. No.

21 JUDGE ALBERS: All right. That's all I had.
22 Thank you. Did you have any redirect?

1 MS. VON QUALEN: No, I have none.

2 JUDGE ALBERS: Thanks.

3 (Witness excused.)

4 JUDGE ALBERS: The remaining witnesses on the
5 list for today are Layne Albert and Bonita Pearce
6 and we already talked about Mr. Lyons' availability.
7 With regard to Ms. Pearce --

8 MS. VON QUALEN: We would just as soon put her
9 testimony in by affidavit if no one objects.

10 MR. FLYNN: No objection.

11 JUDGE ALBERS: No objection, and I think you
12 e-mailed or put on e-Docket the affidavit already,
13 or did I imagine that?

14 MS. VON QUALEN: No, we did file affidavits of
15 Sheena Kight, Rex Evans, Ron Linkenback, Greg
16 Rockrohr, James Spencer and Dave Rearden. We will
17 be filing additional affidavits. So far I know it
18 will be Mike McNally, Mike Luth and Bonnie Pearce.

19 JUDGE ALBERS: Is it your intention then today
20 to identify and move for admission of Ms. Pearce's
21 exhibits?

22 MS. VON QUALEN: Yes. Ms. Pearce provided ICC

1 Staff Exhibit 9.0, Direct Testimony of Bonnie
2 Pearce, consisting of 23 typewritten pages which was
3 filed electronically on July 9, 2004, and also ICC
4 Staff Exhibit 19.0, Rebuttal Testimony of Bonita
5 Pearce, which was filed electronically on August 13,
6 2004, and that consists of 12 typewritten pages.
7 Staff intends to file an affidavit by Ms. Pearce
8 electronically and would move for the admission of
9 ICC Staff exhibits 9.0 and 19.0.

10 JUDGE ALBERS: What do you intend to mark the
11 affidavit as?

12 MS. VON QUALEN: It will be marked as 19.1.

13 JUDGE ALBERS: Any objection to the admission
14 of any of those exhibits?

15 MR. FLYNN: No, Your Honor.

16 JUDGE ALBERS: Then 9.0, 19.0, 19.1 from Staff
17 are admitted. Those are all public, right.

18 MS. VON QUALEN: Yes.

19 (Whereupon ICC Staff
20 Exhibit 9.0, 19.0 and
21 19.1 were admitted into
22 evidence.)

1 JUDGE ALBERS: And with regard to Mr. Albert, I
2 understand at this point in time I am the only one
3 that had any question for him but he is not able to
4 make it. And as I talked with Mr. MacBride earlier,
5 I am comfortable just asking -- my question was
6 simply a clarifying question, and if the Company is
7 willing to represent that my belief is correct --
8 and I will repeat the question so we are all clear,
9 Mr. Albert discussed a \$300 million of ADIT related
10 to book tax timing differences at lines 99 through
11 102 of his testimony. I believe he only filed
12 surrebuttal testimony?

13 MR. MacBRIDE: Correct.

14 JUDGE ALBERS: My question to him would have
15 been is that 300 million discussed in his testimony
16 the same as the 310 million described by Mr. Nelson
17 in his direct testimony, Case 1, identified as "Net
18 change due to step up" showed under the Ameren
19 ownership scenario, and it is?

20 MR. MacBRIDE: And the answer to your question
21 is yes.

22 JUDGE ALBERS: They are the same.

1 MR. MacBRIDE: Yes, they are both referring to
2 the elimination of accumulated deferred income taxes
3 on --

4 JUDGE ALBERS: And Mr. Albert just rounded it a
5 little bit lower?

6 MR. MacBRIDE: Yes.

7 JUDGE ALBERS: I can accept that. Thank you.
8 And as far as his exhibits then --

9 MR. MacBRIDE: Judge, would you like me to go
10 through all of the -- we had a total of four
11 witnesses from Illinois Power or Dynegy, none of
12 whom have been asked to appear for cross. If you
13 would like I can go through them.

14 JUDGE ALBERS: If you want to do those today,
15 you can. That's fine.

16 MR. MacBRIDE: Let me identify those for the
17 record then. First, we had direct testimony and
18 exhibits sponsored by Peggy Carter of Illinois
19 Power. Those were Applicants' 11, Applicants'
20 Exhibit 11.0. By the way, this is on the last page
21 of the witness list we gave you yesterday.
22 Ms. Carter's direct testimony was Applicants'

1 Exhibit 11.0 and she also sponsored Applicants'
2 Exhibit 11.1 and Applicants' Exhibit 11.2. Exhibit
3 11.1 is titled Tax Assumption Agreement. Exhibit
4 11.2 is titled Proposed IP Accounting Entries.

5 Next we had several --

6 JUDGE ALBERS: Were those all publicly
7 available?

8 MR. MacBRIDE: Yes. Next we had several pieces
9 of testimony sponsored by Frank A. Starbody of
10 Illinois Power Company. Mr. Starbody sponsored
11 Applicants' Exhibit 12.0, his direct testimony, and
12 Applicants' Exhibit 12.1 which is the text of
13 Section 5.21(c) of the Stock Purchase Agreement.
14 Mr. Starbody also sponsored revised Applicants'
15 Exhibit 17.0 titled Revised Rebuttal Testimony of
16 Frank A. Starbody, and I would note the originally
17 filed and circulated rebuttal testimony of
18 Mr. Starbody consisting of some 29 pages was almost
19 entirely responsive to testimony of the RES
20 Coalition Panel which has been withdrawn. And so
21 Mr. Starbody's rebuttal was revised to remove all of
22 the material responsive to the RES Coalition

1 witnesses. So his resulting rebuttal testimony is
2 revised Applicants' Exhibit 17.0.

3 And finally Mr. Starbody sponsored
4 surrebuttal testimony identified as Applicants'
5 Exhibit 34.0, and all of Mr. Starbody's exhibits are
6 public.

7 Next we had rebuttal testimony sponsored by
8 Barry Huddleston, H-U-D-D-L-E-S-T-O-N, of Dynegy,
9 Inc., which is identified as Applicants' Exhibit
10 18.0. That exhibit is public.

11 And finally surrebuttal testimony sponsored
12 by Layne, spelled L-A-Y-N-E, J. Albert, A-L-B-E-R-T,
13 identified as Applicants' Exhibit 35.0.
14 Mr. Albert's surrebuttal testimony is also public.

15 All of the foregoing exhibits were filed on
16 e-Docket on the date shown on the witness list we
17 provided the ALJ. That includes Mr. Starbody's
18 revised rebuttal which was filed on e-Docket on
19 August 19.

20 We intend to file affidavits of Ms. Carter,
21 Mr. Starbody, Mr. Huddleston and Mr. Albert as a
22 group exhibit -- I guess we are going to file

1 affidavits individually. So Ms. Carter's affidavit
2 will be Applicants' Exhibit 11.3. Mr. Starbody's
3 affidavit will be Applicants' Exhibit 34.1.
4 Mr. Huddleston's affidavit will be Applicants'
5 Exhibit 18.1, and Mr. Albert's affidavit will be
6 Applicants' Exhibit 35.1. So, therefore, we offer
7 all the foregoing exhibits into evidence.

8 JUDGE ALBERS: Any objection?

9 MS. VON QUALEN: Staff has none.

10 JUDGE ALBERS: Hearing no objection, the
11 exhibits identified by Mr. MacBride just now are all
12 admitted into the record as public documents.

13 (Whereupon Applicants'
14 Exhibits 11.0, 11.1,
15 11.2, 11.3, 12.0, 12.1,
16 17.0 Revised, 18.0,
17 18.1, 34.0, 35.0, 35.1
18 were admitted into
19 evidence.)

20 JUDGE ALBERS: Anything else?

21 MR. MacBRIDE: No, sir.

22 JUDGE ALBERS: I am not aware of anything else

1 to discuss that needs to be taken care of on the
2 record today. Please correct me if I am --

3 MR. MacBRIDE: Can we go off the record?

4 MS. SATTER: I have one very minor matter.
5 Yesterday my office filed another version of David
6 Effron's rebuttal testimony, and I just wanted to
7 let people know that was done and the reason was the
8 cover page indicated that there was proprietary
9 information and there is none. So the only thing
10 that was changed was that that legend was removed
11 from the cover page. So that is the testimony that
12 we will refer to in our affidavit, but it is the
13 same except for removing that language.

14 JUDGE ALBERS: Okay, thank you. And I am
15 sorry --

16 MR. MacBRIDE: Could we go off the record for
17 just a minute?

18 JUDGE ALBERS: Off the record.

19 (Whereupon there was
20 then had an
21 off-the-record
22 discussion.)

1 JUDGE ALBERS: Back on the record.

2 MR. MacBRIDE: The Applicants and the remaining
3 active parties, Staff, the Attorney General, CUB,
4 and the IIEC have agreed and propose to you a
5 briefing schedule consisting of simultaneous initial
6 briefs on September 13 and simultaneous reply briefs
7 on September 21, and with the initial brief
8 Applicants would submit a proposed order as well.

9 JUDGE ALBERS: So with the initial brief?

10 MR. MacBRIDE: Yes.

11 JUDGE ALBERS: Okay. I guess if that's what
12 you all agreed to, that's fine with me. So anything
13 else then?

14 MR. FOSCO: Just a time for next week for the
15 afternoon hearing on Monday.

16 JUDGE ALBERS: Sure.

17 MR. MacBRIDE: It looks like at this time we
18 have estimated cross of two and a quarter hours in
19 total. So 1:00 o'clock, 1:30?

20 MR. FOSCO: That would be fine, either of
21 those.

22 JUDGE ALBERS: I am flexible. Does someone

1 have a preference?

2 MS. SATTER: One o'clock.

3 JUDGE ALBERS: All right, one o'clock. And if
4 there is nothing further, we will continue this
5 matter to Monday, August 30, at 1:00 p.m.

6 (Whereupon the hearing
7 in this matter was
8 continued until August
9 30, 2004, at 1:00 p.m.
10 in Springfield,
11 Illinois.)

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